considered is whether this policy has been legally assigned. That depends upon the meaning to be given to the word "legally," which must be taken most strongly against the office, as it is inserted by them for their protection. Now, at law, a policy cannot be assigned except to the Crown; but it is clear that this is not what is intended by the limitation. The word cannot be used here in its technical sense, as opposed to equitable; the word "legal" is generally employed as equivalent to valid, in which sense the courts of law and equity will recognize its meaning. There is a technical sense in which we use the word "legal," that is when we speak of a legal right as opposed to an equitable one; but that is not its meaning in common parlance. I am satisfied that whoever prepared this proviso did not use the word in its technical sense, but meant that the policy must be validly and effectually assigned. Whether this has been done in this case, is a question of evidence. And, upon the evidence, I think it would be difficult to deny that there was a valid deposit of the policy with the plaintiff by the insured to secure advances made for his benefit, and the measure of relief to which the plaintiff is entitled, is the amount due to him in respect of such advances, not exceeding the amount of the policy. An account must be taken of what is due to the plaintiff, unless the account can be settled by arrangement.

In the Court of Queen's Bench.

JACKSON AND ANOTHER *vs.* FORSTER.

1. A life policy contained the following condition: "This policy will be void if the life assured die by his own hands, the hands of justice, by duelling, or by suicide; but if any third party have acquired a bona fide interest therein by assignment, or by legal or equitable lien for a valuable consideration, or as security for money, the assurance thereby effected shall nevertheless, to the extent of such interest, be valid and of full effect." On the 9th July the assured became bankrupt according to the laws of Valparaiso, and his property then vested in the escribano, or officer of the court, who took possession, and on the 15th July assignees were

appointed, to whom all the property passed by operation of law. On the 14th July the assured committed suicide.

Held, that the assignees were not entitled to the benefit of the policy under the above condition, but that the condition was intended to apply where there was a contract and a transfer by the parties.

This was a special case.

The plaintiffs claim the sum of money in dispute in this case as assignees of the estate and effects of the late Mr. Matthew de Bordes, a member of the firm of Mickle & Co., merchants, at Valparaiso, according to the law of that country.

The defendant is one of the directors of the Liverpool and London Fire and Life Insurance Company, and is authorized to sue, and liable to be sued, for and on behalf of the said company.

On the 9th Oct., 1847, Mr. Matthew de Bordes effected with the said company a policy of insurance on his own life.

Amongst the conditions of the said policy, the following is the only material one in this case :—

"This policy will be void if the life assured die by his own hands, the hands of justice, by duelling, or by suicide; but if any third party have acquired a *bona fide* interest therein, by assignment, or by legal or equitable lien for a valuable consideration, or as security for money, the assurance thereby effected shall nevertheless, to the extent of such interest, be valid and of full effect, provided the nature and extent of such interest be proved to the satisfaction of the directors."

On the 9th July, 1856, the firm of Mickle & Co. became bankrupt, according to the course of law at Valparaiso. M. de Bordes was domiciled at Valparaiso at the time of the bankruptcy, and was included therein.

The firm of Mickle & Co. made a cession or surrender of the whole of their estate and effects to their creditors before the Tribunal of Commerce at Valparaiso. The plaintiffs, being creditors of the said firm, were by such tribunal appointed assignees to the estate.

On the beforementioned day the partners in the house of Mickle & Co., including M. de Bordes, according to the law of Chili, and in conformity with the practice of the country in such cases, presented themselves before the judge of the Consulado Court at Val-

paraiso, and then and there declared themselves bankrupts. By that act itself they made in point of law a cession of all their property to the said court. The property from that moment vested by operation of law in the escribano, or notary officially attached to the said court. To the said escribano was delivered by Mickle & Co., the key of their counting-house, as and for a sign of the transfer of all their effects to him; in this act M. de Bordes joined. On the 15th July, 1856, after the declaration of bankruptcy and transfer of the property, a meeting of the creditors of the said firm of Mickle & Co. was called, and assignees were appointed thereat. Upon the appointment of such assignees, *ipso facto*, the property of the bankrupt shifted by operation of law from the said escribano of the said court to and vested in the said assignees.

On the 14th July, 1856, after the said declaration and act of delivery aforesaid, and before the appointment of the plaintiffs as assignees as aforesaid, and before they had any interest in the said policy, M. de Bordes committed suicide. The plaintiffs have not acquired any *bona fide* interest in the said policy by assignment, or by legal or equitable lien for a valuable consideration, or as a security for money, or further or otherwise than as having become such assignees as aforesaid, and having the property of the said firm of Mickle & Co. vested in them in the manner aforesaid. All the premiums due upon the policy had been duly paid up to the time of his death. The question for the opinion of the court was, whether, under the circumstances, the plaintiffs were entitled to recover. If the court should be of opinion in the affirmative, judgment was to be entered for the plaintiffs, against the said company for the said sum of 600*l.* If the court should be of opinion in the negative, judgment was to be entered for the defendant; and in either case the costs to follow the event.

Wilde, Q. C., (*Coleridge* with him,) for the plaintiffs.

On the 9th July, a *bona fide* interest by assignment as security for money passed to the escribano, and on the 15th July it passed from him to the assignees. This was an assignment by operation of law in every respect *bona fide*, and for a good consideration.

(Com. Dig. "Assignee.") The object of this provision in the policy is to prevent the assured committing suicide. [Lord CAMPBELL, C. J.—I should have thought the object was to make the policy a security in the hands of a third person. CROMPTON, J.—You say, if there has been an assignment, the claim is good against the office. Suppose the case of a father insuring his life and assigning to his child, and committing suicide, the child would be a *bona fide* assignee.] There is no difference between an assignment to the creditor or to the whole body of creditors. This is an assignment by operation of law. The 1 and 2 Will. 4, c. 56, vests the property in an insolvent's assignees by virtue of the mere appointment, and they are in the same position as if there had been an assignment; here the assignment was *bona fide*, and as security for money, and there would be also a sufficient consideration, the insolvent's freedom from the pursuit of his creditors.

Macauley, Q. C., (*Raymond* with him,) for the defendant.—The question turns on the meaning of the exception in the policy. That exception clearly contemplates a bargain or contract, and is made in favor of a person who has acquired an interest in the policy by bargain or some act, not merely the standing in the bankrupt's shoes. The terms import an interest passing as from the assured for a valuable consideration, or as a security.

Wilde, Q. C., in reply.—If the company had intended to exclude bankruptcy, they would have said so in the policy. The court will, if possible, support the policy.

Lord CAMPBELL, C. J.—I am of opinion that the escribano cannot be considered a third person who has acquired a *bona fide* interest by assignment, or by legal or equitable lien for a valuable consideration, or as a security for money, within the meaning of the condition. If we were to go the length of holding it within that condition, I think we should go beyond the intention of the parties; for I do not think that it was the intention that this condition should extend to cases like the present, where there is no contract. The escribano and creditors were not consulted; it is clear that there was no contract, and the case therefore is not within the condition.

CROMPTON, J.—At one time my mind fluctuated a good deal, but, upon consideration, it is clear that any person claiming as assignee of a policy must beyond all question bring himself within the meaning of this exception. Now this assignment must be for a valuable consideration, but I don't think an assignment by operation of law can be said to be for a valuable consideration. I think the exception points to a transfer by the act of the parties, and not by the operation of law. To hold otherwise would be to strain the clause. This cannot be called a *bona fide* seeurity for a valuable consideration; the clause rather means where the assignor gets a *quid pro quo.*

HILL, J.—I am of the same opinion. I think these words were used to enable the assured to deal with his policy by sale of it, or as security for money owing. I think the parties meant an assignment by the party himself, or by legal or equitable lien. There must be an act done by the party himself to give a lien; by such means these policies became more valuable, as being capable of being dealt with.

Judgment for defendant.

In the Court of Queen's Bench.

LUCAS AND OTHERS *vs.* BRISTOWE.

A written contract expressed that defendant had bought "fifty tons of best palm oil, expected to arrive in Bristol from Africa, per the Chalco, at 40*l.* 10*s.* per ton, usual tare and draught. Wet, dirty, and inferior oil, if any, at a fair allowance; and if any difference should arise, the same to be settled by arbitration." In an action for not accepting the oil, parol evidence was admitted of a usage of trade at Bristol, to show that a delivery of a substantial portion of best oil with inferior descriptions, in the proportion of one-fifth best and four-fifths inferior, would have been a compliance with the contract:—Held, that the written contract having left undefined what portion of the oil was to be wet, dirty, and inferior, the evidence of usage was admissible as explaining its terms.

Declaration for not accepting fifty tons of best palm oil, ex Chalco, at 40*l.* 10*s.* per ton, with usual tare and draught, and upon the terms that wet, dirty, or inferior oil (if any) should be taken at a